(i) The action prosecution or proceeding shall not lie or be instituted unless—

(a) one month's previous notice in writing of the intended action and of the cause thereof is given to the defendant;

(b) it is commenced within three months next after the act, neglect or default complained of or in case of a continuance of injury or damage within three months next after the ceasing thereof."

The question immediately arises, under what Enactment or what rules or what duty was the Penghulu acting? Reference has been made to section 66 of the Courts Enactment by which he was to have all the powers given to him by the 'kuasa'. This 'kuasa' has been produced, and a translation has been put in with regard to two of its provisions, viz. 22 and 23. These show that when he receives money he has to make an entry in his book, and that all the money collected has to be paid in on the succeeding month to the District Officer of the District. It has not been shown to me that there is anywhere a section providing for a penalty if the accused omits to pay in the money.

If it is the duty of an officer to pay money in, and he neglects that duty, then he might be liable, provided there were a section making it an offence punishable in a criminal Court or in a Civil Court that he should be liable to any prosecution or action. If there is such a section, then he cannot be prosecuted, and action cannot be taken against him unless section 2 (i) (a) or (b) has been complied with. But in such a case the offence which has been committed and the punishments which are contemplated are under the Enactment which has been infringed. If failure to pay in money involves an offence which is not directly punishable by the Enactment requiring its payment, or if the money has been used unlawfully, then the officer does not come under the provisions of the Enactment of 1929. Now, what is the charge against the accused. It is one of criminal breach of trust which is defined in the Penal Code as follows:—

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'".

This is an entirely different matter to the infringement of an Enactment requiring an act to be done by an officer and imposing a penalty for non-compliance with the requirements of the Enactment.

In the present case the offence with which the accused is charged is not the infringement of any such Enactment. It is not the failure in performing his duty by not paying in an amount received. A much more serious offence is alleged viz. that the Penghulu not only did not pay in the money but appropriated it to his own use, and has thereby committed the offence known as criminal breach of trust.

Section 2 of Enactment No. 20 of 1929 applies only to the performance or non-performance of official duties, and affords a certain amount of protection to officials in respect of their official duties by requiring that notice should be given. It does not extend to any offence committed contrary to the sections of the Penal Code. The reason is obvious, for it cannot be a part of any official's duty to commit an offence contrary to the Penal Code.

I have, therefore, come to the conclusion that the learned Magistrate was wrong in allowing the objection that was taken. The appeal must be allowed, and the case must be sent back to the Magistrate to hear and determine.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]
THOMAS, C.J., BURTON, Ag. C.J. (S.S.) & TERRELL, J.
September 12, 1935.

TAN THIA KHWA
CHOP BAN HIN LEONG AND COMPANY
Defendants-Appellants

vs.

TAN EE TONG
CHOP ENG HUAT.....Plaintiffs-Respondents

[PERAK CIVIL APPEAL No. 6 of 1935]

The Courts Enactment 1917, section 17 (c)—Costs—The Civil Procedure Code, 1918, section 218—Discretion of Court—Order as to costs founded on error of law.

The plaintiffs claimed damages for assault and trespass, also for breach of contract. At the trial no special damage was proved as to the breach of contract but the Judge, in awarding the plaintiffs $300 damages, included in that amount nominal damages for the breach of contract, and also ordered the defendants to pay two-thirds of the plaintiffs' taxed costs. On appeal counsel for the defendants-respondents admitted that the amount by which the damages would be enhanced by taking into account the breach of contract would be so little as practically to make no difference.

Held, on appeal:—

Even though no special damage had been proved as to the breach of contract the plaintiffs were entitled to some damage, and the trial Judge was right in taking such breach into consideration when awarding damages. No leave to appeal had been obtained and the appeal having been made only nominally on the merits and actually as to costs, must be dismissed by virtue of the provisions of section 17 (c) of the Courts Enactment, 1918.—*per* Sir Samuel Thomas, C.J.

When a Court founds its discretion in awarding costs on a wrong principle or on a mistake of law, the Court of Appeal is precluded from entertaining an appeal by section 17 (c) of the Courts Enactment, 1918, when leave to appeal has not been granted, unless there is an appeal as to the merits which is real and not colourable.

—*per* Burton, Ag. C.J. (S.S.) and Terrell, J.

G. Terrell for the defendants-appellants.

H. R. Rix for the plaintiffs-respondents.

Cur. Ad. Vult.

THOMAS, C. J.—The suit in respect of which this appeal is brought claimed amongst other matters damages for trespass to goods and person and also damages in respect of a breach of contract.

The facts shortly are that there had been transactions relating to the sale of rubber between the plaintiff and the defendant, which had continued over a number of years. The usual method of transacting business was that the plaintiff delivered rubber to the defendant, and drew in advance against the value of that rubber. For a limited period the plaintiff retained the right to sell rubber, but after that period had elapsed the defendant was entitled to purchase at the price on the day following the termination of the period. The result of these transactions showed that a small sum had been over-drawn by the plaintiff. The defendant having heard that the plaintiff was no longer consigning his rubber to him (the defendant), but was dealing with other firms, went on the 10th of December with a lorry and servants to collect rubber from the plaintiff. The plaintiff resisted the attempts of the defendant and his servants to remove any of his rubber. A disturbance ensued in the course of which the plaintiff was assaulted. Later on through the intervention of a friend the plaintiff allowed a small amount of rubber to be removed.

As to the alleged breach of contract it would seem that the rubber had in fact been sold by the defendant prior to the date that he was entitled to do so, on account of the coming into force of rubber restriction.

The learned trial Judge found that there was a trespass on the part of the defendant to the goods of the plaintiff in his attempt to take by force two pikuls of rubber, and that as a result of that action the fight ensued. He further found that the defendant admitted that he broke the custom by failing to notify the plaintiff of his intention to buy. In the course of his judgment, he says, that the defendant bought the rubber at the end of December 1933, and that it had not been proved that the amount with which he credited the plaintiff was too small, although it had been suggested that the deductions for smoking etc. were unduly high. In consequence he decided to consider this matter when assessing the damages to which the plaintiff was entitled. Eventually he awarded the plaintiff $300 considering the case as a whole. On the question of costs he ordered that the costs of both parties should be taxed, and that the defendant should pay two-thirds of the plaintiff's taxed costs and that the plaintiff should pay one-third of the defendant's taxed costs. He certified that there was sufficient reason for bringing the suit in the Supreme Court.

The defendant has appealed. His first ground is that the Judge was wrong in holding that the two pikuls of rubber were removed under pressure from the plaintiff, and that he should have held that they were removed with the leave and licence of the plaintiff.

In the course of the argument Mr. Terrell for the appellant contended that the trespass was purely technical. I am unable to concur with this suggestion. Although the rubber was eventually removed with the consent of the plaintiff owing to the intervention of a neighbour, there had previously been a determined effort to remove a quantity of rubber, as a result of which a fight had occurred. In my opinion there was ample evidence that there had been a trespass to the person and property of the plaintiff, which would warrant the finding of the learned trial Judge to that effect.

Mr. Terrell has also said in the course of the argument that he did not suggest that the defendant had not committed a breach of contract as the trial Judge found. Although there had been a breach of the contract, no special damages had been proved.

Even in such a case the plaintiff would be entitled to some damages, see *Marzetti* v. *Williams*, (1830) 1 B. & Ad. 415, and *The Mediana*, (1900) A.C. 113, 115. From the fact that the learned trial Judge has not thought it necessary to assess damages in respect of the breach of contract, it would seem obvious that he had awarded only trifling damages, even if the expression 'consider the matter' means that he did in fact award anything under this heading. I am, therefore, satisfied that the second and third grounds of appeal must fail.

I am satisfied further that on all the evidence given in the case the sum of $300 awarded by the learned Judge was in no wise excessive.

There remains the question of costs. By section 218 of the Civil Procedure Code the Court is given a discretion as to costs. The section is as follows:—

> "(i) The Court shall have full power to give and apportion costs of every application and suit in such manner as it thinks fit, and the fact that the Court has no jurisdiction to hear the application or try the suit is no bar to the exercise of such power.
>
> (ii) When the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing."

Section 17 of the Courts Enactment provides that:—

> "No appeal shall be brought to the Court of Appeal.....
>
> (c) where the judgment or order relates to costs only except with the leave of the Court or a Judge."

No such leave has been applied for or obtained in the present case. Section 16 (ii) of the Courts Enactment provides that

> " in any case not provided for by this Enactment or by rules in force thereunder the practice and procedure for the time being of the Court of Appeal in England shall be followed as nearly as may be."

These two provisions obviously intend that the practice prevailing in England should be followed

In the course of the argument Mr. Terrell said:—

> " If I fail to show that the Court below has made an error then the application can be made, but otherwise I concede not."

In my opinion no error has been made with regard to the taking of the breach of contract into consideration when awarding damages. The appeal has been made only nominally on the merits and actually as to costs. In the case of *Harpham* v. *Shacklock*, 19 Ch. D. 207, 215, Jessel M.R. said:—

> " I look upon the order with some surprise. It is certainly the general rule that in a priority suit the costs follow the mortgages, but the Court has a discretion, and can order one or other of the claimants to pay the costs if a case is made for it. If we were to vary the order of the Court below as to costs when an appeal on the merits fails, we should practically be allowing an appeal for costs only, and appeals would be brought nominally on the merits but really only for the purpose of varying the order as to costs. I do not think that such is the case here, for I believe this to be a *bona fide* appeal on the merits; but we ought not to depart from the general rule."

In the case of *Games* v. *Bonnor*, (1884) 54 L.J. Ch. 517, 522 Colton, L.J. said:—

> " The only other question is as to costs. We are precluded by the rules, which have the effect of a statute, from entertaining an appeal on a question of costs alone when they were in the discretion of the Court below. Mr. G. Woods did not in fact contest this proposition; but he urged that a purchaser is entitled to his costs up to the time when a good title is shewn, and that being so the costs here were not in the discretion of the Judge below. But a purchaser has no such general right, and costs alone are not subject to appeal. Although we are slightly altering the order in one particular, that particular does not affect costs; and I am of opinion that we are not at liberty to go into the question of costs."

In my opinion, therefore, this appeal should be dismissed with costs.

BURTON, AG. C.J. (STRAITS SETTLEMENTS).—In this action the plaintiff made two claims; firstly damages for assault and trespass on which he recovered $300 damages; and secondly the sum of $1,152.20, the balance of the account of rubber dealings between the two parties, with interest, on which he failed. But the learned Judge ordered that the costs of both parties be taxed and that the defendant pay two-thirds of the plaintiff's taxed costs, and the plaintiff pay one-third of the defendant's taxed costs.

The memorandum of appeal contains six grounds of appeal, the first four dealing with the merits and the last two with costs. But of the first four only the second ground was argued,— that the Judge was wrong in holding that the plaintiff was technically entitled to damages for an admitted breach of the contract when no damage was proved. In the judgment occurs the passage:—

> " As regards the sale of the plaintiff's rubber in his hands before the expiration of the month, the plaintiff is technically entitled to damages"

and the learned Judge says that he took this into account in arriving at the figure $300. But Mr. Terrell admitted in argument that the amount by which damages would be enhanced by taking into account the breach of contract would be so little as practically to make no difference; and the case is in my view indistinguishable from the case of *Harpham* v. *Shacklock*, 19 Ch. D. 207 and the cases following that line of decision. In that case the argument was that it was quite without precedent that in a priority suit one of the defendants (Beckett & Co.) should be ordered to pay the costs of all parties; but Jessel M.R. though agreeing with this contention said:—

> " If we were to vary the order of the Court below as to costs when an appeal on the merits fails, we should practically be allowing an appeal for costs and appeals would be brought nominally on the merits, but really only for the purpose of varying the order as to costs."

For although this sum of $300 awarded by Howes, J. on the first issue would appear to have been wrongly swelled by the addition of nominal damages for a breach of contract which was neither a cause of action nor pleaded, it is quite clear that the reduction of that amount cannot be a serious ground of appeal, or anything else than a pretext for the alteration of the order for costs.

Upon this the question arises whether the appeal will lie at all. Section 17 (c) of the Courts Enactment is as follows:—

> " 17. No appeal should be brought to the Court of Appeal in any of the following cases:
>
> (c) Where the judgment or order relates to costs only except with the leave of the Court or a Judge."

It is not easy to escape from the plain meaning of the words of this section; but the Courts in

England made inroads into the corresponding provision of the Judicature Act, until the Court of Appeal allowed appeals from the exercise by a Judge of his discretion as to the costs of a trial without a jury, no leave to appeal having been obtained. The whole position was then reviewed by the House of Lords in *Donald Campbell & Co.* v. *Pollak*, (1927) A.C. 732, and at p. 811 Viscount Cave, L.C. says:—

> "A successful defendant in a non-jury case has no doubt, in the absence of special circumstances, a reasonable expectation of obtaining an order for the payment of his costs by the plaintiff; but he has no right to costs unless and until the Court awards them to him, and the Court has an absolute and unfettered discretion to award or not to award them. This discretion, like any other discretion, must of course be exercised judicially....But when a Judge, deliberately intending to exercise his discretionary powers, has acted on facts connected with or leading up to the litigation which have been proved before him or which he has himself observed during the progress of the case, then it seems to me that a Court of Appeal, although it may deem his reasons insufficient and may disagree with his conclusion, is prohibited by the statute from entertaining an appeal from it"

and Lord Carson at p. 826 is emphatic:—

> "In such a case the section says that the order made by the Judge is not subject to appeal, and therefore neither the Court of Appeal nor this House is competent to entertain such an appeal."

It is true that Viscount Cave's judgment deals only with a discretion founded on facts; and in the present case Howes, J. founded his discretion upon a mistake of law. In the case of *In re Rio Grande Do Sul Steamship Co.*, 5 Ch. D. 282 at p. 284 James, L.J. said:—

> "I am of opinion that though this decision relates to costs, it involves a question of law and principle, and is subject to appeal."

But in this case the order for costs followed from a mistake of law and was not discretionary at all, and in *Donald Campbell & Co.* v. *Pollak* (*ubi sup*) Lord Sumner refers at p. 765 to the class of case in which the Court of Appeal have assumed jurisdiction to hear these appeals where the discretion is founded on a wrong principle of law, stating that they have never come to the House of Lords for approval or the reverse and will "be open to review on future occasions."

I cannot see that under the wording of this section a mistake of law can give a right of appeal where a mistake of fact cannot. Lord Sumner says at p. 763 "a question of law must be a question as to the law affecting some subject-matter, and so with a question of fact. The only subject-matter here is costs, and the only question of law is whether, in this case, the judge's discretion as to costs was exercisable in either of two directions or in one only. Justiciable questions are not divisible into three kinds, questions of law, questions of fact, and questions of discretion. Judicial discretion as to costs goes to the judge's powers over questions of law and questions of fact, but the powers themselves alike are powers over costs and costs only."

I think therefore that we cannot escape from the plain words of the statute. Mr. Terrell attempted in argument to press the literal meaning of these words so as to make them refer to an order which dealt exclusively with costs, but I find it difficult to imagine such an order, and I think the natural meaning of the words is as if the words "appealed against" were inserted after the word order.

I think therefore this appeal must be dismissed on the ground that it is incompetent, and that the respondent should have costs.

TERRELL, J.—The plaintiff, respondent on the appeal, had two main causes of action against the defendant—one in contract and one in tort.

The claim in contract was as follows:—

The plaintiff alleged

(1) that between the 22nd November and the 10th December 1933 he had delivered to the defendant a certain quantity of rubber;

(2) that the rubber delivered included a lot of 22 pikuls 50 catties which the defendant had wrongfully removed from his store on the 10th December;

(3) that the defendant not having given notice that he had closed the rubber transactions the plaintiff was entitled to consider the transactions still open and closed them on the 19th July 1934 when the price of rubber owing to restriction was considerably in excess of the price ruling six months earlier.

The claim in tort can also be amplified: it included a claim

(4) for wrongfully entering the plaintiff's premises on the 10th December and assaulting the plaintiff—this may be described as trespass to the person, and

(5) wrongfully removing 22 pikuls 50 catties of rubber, which may be described as trespass to goods.

Added to this was a claim

(6) that as a result of the trespass the plaintiff had suffered damage in his business.

These being the issues it is necessary to turn to the written judgment to ascertain the learned Judge's findings:—

As to (1) there was no dispute.

As to (2) the finding was that on the 10th December 1933 the defendant collected from the plaintiff 2 pikuls of rubber only, as alleged by

the defendant, and not 22 pikuls 50 catties as alleged by the plaintiff.

As to (3) the learned Judge accepted the defendant's accounts and rejected those of the plaintiff.

As regards the plaintiff's claim that the rubber should have been valued at the prices ruling on the 19th July 1934, he says:—

> "These prices (i.e. the July prices) appear to me to be on a false basis: as the defendant was, according to the custom. clearly entitled to buy the rubber belonging to the plaintiff, one month after the last delivery (viz. he could have bought on the 10th January) in the absence of previous instructions from the plaintiff to effect a sale."

It is admitted by the defendants that they committed a technical breach of contract in buying the rubber on the 30th December instead of on the 10th January, but the plaintiff never put this forward as one of his causes of action, nor did he attempt to prove that the amount which he credited to the plaintiff was too small. This technical breach of contract was not accordingly one of the issues in the action.

As to (4) the learned Judge found in favour of the plaintiff and assessed the damages at $300. In arriving at this figure, however, he took into consideration the fact that the defendant had bought the rubber as on the 30th December 1933 instead of as on the 10th January 1934, although as I have said this was not really an issue and no damage had been proved.

As to (5) it is not quite clear what the learned Judge's findings are. After describing the defendant's forcible entry into the plaintiff's premises and the disturbance that resulted in the intervention of Ng Aik Guan who took upon himself the role of peacemaker, he continues:—

> "Apparently he (Ng Aik Guan) arrived after the fight and it was on his suggestion (to which the plaintiff ultimately agreed) that the two pikuls of rubber were handed to the defendant. This witness checked the weighing of the two pikuls, which were then put into the defendant's lorry."

He then rejects the plaintiff's allegation that the defendant had already removed other rubber (the 20 pikuls) and put it on his lorry. He says:—

> "I do not believe that this was so, and am satisfied that the only rubber which the defendant removed was 2 pikuls, but that even these were only taken from the plaintiff under pressure and after the mediation of Ng Aik Guan, and that the taking of these, or in any case the attempt to take them, amounted to a trespass on the part of the defendant."

As the learned Judge has held that the plaintiff agreed to Ng Aik Guan's suggestion that the two pikuls should be taken by the defendant, his conclusion that there was trespass in respect of these two pikuls is clearly not justified. The wrongful entry into the premises has already been dealt with under heading (4) and cannot be interpreted as a trespass to goods which did not in fact take place.

As to (6) the learned Judge found that the damages claimed were too remote.

To summarize the learned Judge's findings, they are as follows: As to (1) there was no dispute. On issues (2), (3), (5) and (6) the learned Judge has in substance found in the defendant's favour. The only issue which was found in the plaintiff's favour was No. (4) and in assessing the damages at $300 the learned Judge took three things into consideration, (a) the assault, (b) the attempted trespass in respect of the 2 pikuls of rubber and (c) the plaintiff's technical breach of contract. I am not prepared to say that the attempted trespass under (b) might not be considered along with (a), but I think it was clearly incorrect to take into consideration the breach of contract which was never an issue between the parties. In my opinion, however, the damages, if awarded merely in respect of the trespass to the premises and the assault, were not excessive and should not be varied.

But the principal point for argument was that the learned Judge having made a mistake in assessing the damages on a wrong principle, exercised his discretion as to costs on a wrong basis. There can I think be no doubt that if an appellant succeeds to any extent on the merits, the order as to costs in the Court below can be reviewed. If, however, the finding on the merits is allowed to stand, the appeal resolves itself into one as to costs only. As the point was not argued at the original hearing, counsel were later invited to address the Court on the question whether the order as to costs could be reviewed at all if the appeal failed on the merits.

In the Court below the learned Judge's finding as to costs was as follows:—

> "I certify under Rule 13 that there was sufficient reason for briging the suit in the Supreme Court, my reason being that if the defendant had not sold the rubber prematurely, the plaintiff could not have raised the question of accounts at all, and in that case should have gone to the Magistrate's Court. The plaintiff has succeeded on the claim for damages for the assault and trespass; the defendant has succeeded on the accounts except on the technical point that he sold prematurely, which was the starting point of the accounts being brought into dispute. I order that the costs of both parties be taxed and that the defendant do pay 2/3rds of the plaintiff's taxed costs and the plaintiff pays 1/3 of the defendant's taxed costs."

It appears to me that part of this finding at all events is based on a misconception. It is not true that the plaintiff only raised the question of the accounts because the defendant had bought the rubber prematurely on the 30th December 1933. The plaintiff knew that he had done so, through the correspondence which had passed before the plaint was issued, but he never made this premature purchase one of his causes of action or claimed damages in respect thereof. The record makes it abundantly clear that the reason why the plaintiff made his claim in contract was because he alleged that the defendant had taken 22 pikuls and 50 catties of rubber instead of two pikuls only and that he was entitled to be paid in accordance with the prices ruling on the 19th July 1934, and on both these issues the plaintiff failed.

The question then arises whether the Court of Appeal can review the learned Judge's discretion as to costs, such discretion having been exercised on the basis of certain findings which in at least two particulars cannot be justified. Although there are differences between the provisions of the Courts Enactment and the Judicature Act, 1925, on the subject, the differences are very slight and for the purpose of interpretation the provisions may be regarded as identical. *Prima facie* therefore there can be no appeal as to costs and it has been held that if an appeal on the merits fails the order as to costs cannot be altered. Otherwise appeals would be brought nominally on the merits merely for the purpose of reopening the order as to costs. (*Harpham* v. *Shacklock*, 19 Ch. D. 207, 215). It has also been laid down by the House of Lords in *Donald Campbell & Co. Ltd.* v. *Pollak*, (1927) A.C. 732, 809 that when a judge in exercising his discretion has acted on facts connected with or leading up to the litigation the Court of Appeal is prohibited by statute from entertaining an appeal from his decision.

There are, however, cases which are outside this rule, where the judge of first instance having made a mistake upon a point of law, had no material upon which to exercise his discretion at all. One of such cases is *In re Rio Grande Do Sul Steamship Co. Ltd.*, 5 Ch. D. 282, in which the Court of Appeal allowed an appeal on a question of costs only holding that the master of a ship who held a lien was entitled as of right to all his costs of the hearing before the Vice Chancellor as costs properly incurred by a mortgagee in enforcing his security. At p. 286 Brett, J.A. says "This is a question of law, not a question about costs which are in the discretion of the judge."

Again, in *Stevens* v. *Metropolitan District Railway Co.*, 29 Ch. D. 60 the plaintiff sought a sequestration order against the Company for having infringed an injunction granted by the Court in entering upon part of the plaintiff's land. The trial judge considered that the Company had committed a breach of the injunction, but made no order except that the Company should pay the costs of the motion. The Company appealed and the Court of Appeal held that there had been no breach of the injunction and reversed the trial judge's order as to costs. At p. 73 Bowen, L.C. said "Such a case is not, I think, within Order LXV r. 1. It really is an appeal against the finding by means of which the Judge clothes himself with jurisdiction to inflict costs." In other words as there had been no breach of the injunction there was no material upon which the Judge could exercise his discretion against the defendants.

I do not think that these cases are in any way inconsistent with the rule laid down by the House of Lords in *Donald Canpbell & Co.* v. *Pollak* (*supra*) and in fact at p. 744 Viscount Cave L.J. quotes with approval the following passage from the judgment of the Privy Council in *Yeo* v. *Tatem*, L.R. 3 P.C. 696, 702 "Their Lordships do not mean to question or recede from decisions that have been pronounced regarding not allowing an appeal for costs, but where there has been a mistake upon some matter of law that governs or affects costs—some matter that involves the due application of principles of law—the party prejudiced is entitled to have the benefit of correction on appeal."

In my opinion, however, the case now before the Court cannot be brought within the exception from the general rule laid down by the House of Lords in cases where the Judge has exercised his discretion as to costs. Although for the reasons stated above I would certainly have felt inclined to exercise the discretion of the Court very differently, I find it impossible to say that there was no material upon which the learned Judge could exercise his discretion in the way he has done. Even if he had not misdirected himself upon the two points referred to above he still might have made the order which is complained of. In the circumstances I think that it is not open to the Court of Appeal to review his order. I would therefore dismiss the appeal with costs.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

THOMAS, C.J. (F.M.S.)

September 16, 1935.

REFERENCE BY THE REGISTRAR OF TITLES, SELANGOR, UNDER SECTION 238 OF THE LAND CODE, 1926.

[SELANGOR CIVIL APPLICATION No. 62 of 1935]

The Civil Procedure Code, 1918, section 237, 238, 243, 265 and 275—The Land Code, 1926, sections 87 and 108—Registration of a prohibitory order against beneficial interest in land.

A prohibitory order cannot be registered in respect of the beneficial interest of a person whose name is not on the register.